Supreme Court, U.S.
FILED

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No.

IN THE

Supreme Court of the United States

JOSEPH R. WEBER
Petitioner, pro-se

v.

WILLIAM J. HENDERSON, POSTMASTER, ET AL;
THE UNITED STATES POSTAL SERVICE, AGENCY

My Opponents

On Petition For Writ Of Certiorari To The
United States Court Of Appeals For The Third Circuit

PETITION FOR WRIT OF CERTIORARI

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47 pp

Questions Presented for Review

1. Should this Court entertain the matters contained within this petition pursuant to Rule 10(c).

2. Did the opponents violate the petitioner's rights held under the First, Fifth and Fourteenth Amendments of the Constitution Of The United States Of America

3. Did the petitioner comply with Equal Employment Opportunity Commission (EEOC) laws, rules, regulations, prior decisions, precedents regarding timely EEO counselor contact by contacting agency individuals who were logically connected to the EEO process and who were or were not EEO counselors and should the time limit for making EEO counselor contact in this case be extended/tolled.

4. Did the opponents have the statutory authority to provide the petitioner with monetary compensation payments for a job related injury, pursuant to the FECA, from August 2, 1994 through May 8, 1998, even though the petitioner was ready, willing, able, available and medically cleared to return to work during the aforementioned time period.

5. Did the opponents violate the Federal Employment Compensation Act laws, rules, regulations by providing the petitioner with said payments even though he was medically cleared to return to work.

6. Did the opponents violate the Merit System Principles.

7. Was the petitioner protected by the Whistleblower Protection Act (WPA) because of the involvement of opponent DOL even though he is an employee of the U.S. Postal Service

8. Did the opponents violate their own agency laws, rules, regulations, regarding the issues raised in questions 1, 2, 3, 4,5 above.

9.Did the opponents violate the Congressional Code of Ethical Conduct.

10. Did the opponents violate the Criminal Code by providing the petitioner with monetary compensation payments and not returning the petitioner to work during the time period from August 2, 1994 through May 8, 1998 and by perpetuating a false, fictitious and fraudulent Workers' Compensation claim and should this matter been addressed by the Department of Justice.

11. Did the opponents abuse their authority and public trust and perpetuate a gross waste of funds by not returning the petitioner to work before May 9, 1998 and by providing Workers' Compensation payments the entire time period that the petitioner was not working.

PARTIES TO PROCEEDING

Not show on the cover of this petition is;

ALEXIS M. HERMAN, SECRETARY OF LABOR
THE UNITED STATES DEPARTMENT OF LABOR
AGENCY

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CITATION TO OPINION

The U.S. District Court EDPA dismissed the petitioner's discrimination/retaliation law suit on January 31, 2001, 99-cv-2574 and the Court's decision is reproduced on pages 10-21 of the appendix. On appeal, the Third Circuit Court of appeals and on February 5, 2002, upheld the District Courts decision to dismiss and the Court's decision is reproduced on pages 2-9 of the appendix. On March 28, 2002 the Third Circuit Court of Appeals denied the petitioners petition for rehearing and the Court's decision is reproduced on page 1 of the appendix.

JURISDICTION

The Court has jurisdiction of the case pursuant to 28 U.S.C. § 1254. The petition was timely filed on June 25, 2002.

REASONS FOR GRANTING WRIT

I A United States Court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court.

II Petitioner's rights to; redress a grievance; due process; equal protection under the law; were violated.

CONSTITUTIONAL PROVISIONS

In brief and in colloquial terms, the petitioner asserts that his rights held under the First, Fifth and Fourteenth Amendments were violated by the opponents and for the following reasons.

First Amendment

Pursuant to the First Amendment, an individual has the right to redress a grievance with the government. The proper forum for an injured federal employee to redress a job related injury/illness is pursuant to the FECA. From August 2, 1994 through May 8, 1998, both opponents refused to process his injury/illness claims pursuant to FECA law and which denied the petitioner gainful employment during the aforementioned time period and also subjected the petitioner to unlawful discrimination and retaliation. Therefore, the petitioner's rights held under the first Amendment were violated.

Fifth and Fourteenth Amendments

Pursuant to the Fifth and Fourteenth Amendments, an individual has the right to due process of the law and equal protection of the law. Referring back to the First Amendment argument, because the opponents would not process the FECA claims and pursuant to FECA law, the petitioner was denied due process and equal protection of the law. In doing so, the petitioner's rights held under numerous statutes, laws, and agency rules and regulations were also violated all of which are listed in the **TABLE OF AUTHORITIES** and Appendix.

STATEMENT OF THE CASE

Introductory Statement to Set the Scene

This petition raises questions concerning Equal Employment Opportunity Commission (EEOC) discrimination Law and reporting agency "abuse of authority" and a "gross waste of funds," pursuant to language of the Merit System Principles. Petitioner has been a career employee of the United States Postal Service (USPS) since October 26, 1986. From August 2, 1994 through May 8, 1998, the petitioner was involuntarily not gainfully employed with opponent USPS and was receiving Federal Employee Workers' Compensation payments (from the Office of Workers' Compensation Programs, "OWCP" and the OWCP is a component office of opponent Department of Labor "DOL") for a compensable job related injury (right shoulder) which was sustained on February 11, 1994. Petitioner filed a Federal Employee Workers' Compensation Act (FECA) injury claim with opponent DOL for said injury and the claim was approved. Beginning on September 6, 1994, (35-days after petitioner stopped working) and up to May 8, 1998, the petitioner brought to the attention of both opponents and on numerous occasions, and in different forums (narrative, verbal, media) that the petitioners FECA injury claim(s) was/were not being timely or properly processed and that he was also medically cleared to return to work. The petitioner made Equal Employment Opportunity (EEO) counselor contact on February 10, 1998 claiming unlawful discrimination (physical/psychological) and reprisal for prior EEO activities. Petitioner was returned to work (under duress) on May 9, 1998. Also at issue are the First, Fifth and Fourteenth Amendments to the Constitution Of the United States Of America. The timing of the February 10, 1998 EEO counselor contact and the timing of returning the petitioner back to work, made by the petitioner, led to the questions set before this Court.

Timely Reporting Claims of Unlawful Discrimination and Retaliation

Petitioner Was not aware of His EEO Rights

The petitioner hereby certifies that even though he is covered by a Collective Bargaining Agreement (CBA), that there is no explanation of the petitioners EEO rights/procedure in said CBA nor are the US Postal Service manuals, which contain said rights/procedure, made available to the craft employees. Furthermore and even though it is required by law, said rights/procedures were never posted at the facility where the petitioner was assigned.

Referring back to the **Questions Presented for Review,** the petitioner asserts that he was timely (pursuant to EEOC LAW) with reporting his claims of discrimination and retaliation with the opponent's and citing ***Cox v. Department of Housing and Urban Development*, EEOC Request No. 05980083 (July 30, 1998)**. Please see pages 31-35, of the appendix. The key words in the decision made by the Equal Employment Opportunity Commission to remand appellant Cox's complaint back to the agency are;

> "The Commission noted that it has long held that a complainant may satisfy the criterion of counselor contact by initiating contact with an agency official logically connected to the EEO process, if the official is not an EEO counselor.

Petitioner met the criteria for timely EEO Counselor contact by contacting "agency" individuals who were "logically connected to the EEO process and who were not EEO Counselors.

As explained in the opening statement, these contacts began on September 6, 1994 and numerous times thereafter.

First, the word "agency" means the employing/discriminating agency/entity, not the EEOC. This issue was confirmed by Chief Administrative Law Judge, Susan Flynn, for the EEOC, Philadelphia Pennsylvania, on June 10, 2002. Therefore, the 3rd Circuit has incorrectly applied EEOC LAW and as it pertains to the matters raised in this petition. The 3rd Circuit's opinion on the word "agency" can be referenced on page 8 of the appendix and which states;

> "Mr. Weber's correspondence was never directed to any one within the EEOC."

Second, the petitioner has already certified that **he Was not aware of His EEO Rights** and mainly concerning the 45-day statute of limitation for EEO counselor contact. Instead, the petitioner wrote numerous letters (beginning on September 6, 1994) to "agency" individuals who were logically connected to the EEO process. Therefore and because the petitioner was not aware of said EEO rights and that he contacted individuals who were logically connected to the EEO process, the petitioner's law suit should not have been dismissed.

Additionally, the petitioner was not aware of the Inspector General Act.

The petitioner will now address the individuals who were logically connected to the EEO process directly infra.

Individuals who were Logically Connected to the EEO Process

In brief and pursuant to COX v. HUD, the petitioner and on September 6, 1994 and numerous times thereafter, contacted agency individuals who were logically connected to the EEO process and who were not EEO counselors and one of those individuals was the Postmaster General (Marvin Runyon) (PMG). The PMG is the EEO Officer for the USPS citing: Delegation of Authority **§ 672.11 of the ELM, page 43 of the appendix.**

Petitioner also contacted the Postmaster of Philadelphia, James Gallagher. The PM "has been delegated the authority to issue final agency decisions for the Postal Service in certain cases within the division"; citing **§ 672.231 (c) of the ELM, page 45 of the appendix.**

Additionally but not lastly, the petitioner contacted the Manager of USPS Human Resources (HR) Harvey White. Manager of HR is responsible for but not limited to the daily directional management of EEO complaint processing, citing **§ 672.232 of the ELM, page 45 of the appendix.**

The postal Inspection Service, White and Gallagher were also aware that the petitioner contacted the Media about the matters raised in this petition and which is addressed directly infra.

Petitioner contacted the Media

These matters were also raised by both opponents and with the Postal Inspection Service and via. para. (7) of the 6/13/96 document. Please see page 37 of the appendix.

The Postal Inspection Service and who is responsible for investigating Prohibited Personnel Practices regarding the USPS, took no action on the matters raised in this petition, as they should have pursuant and to § **668.126** of the ELM, **see page 40 of appendix**. The opponents not petitioner contacted the Inspection Service and because the petitioner was not aware of this procedure. The Inspection Service was provided with a copy of the article that was published in the Federal Times magazine and said article raised the same matters which are in this petition. Postmaster General (Runyon), Gallagher and White were all mentioned in the 6/13/96 document and White and Gallagher received copies of the 6/13/96 document and the magazine article. Also mentioned in the 6/13/96 document is the District Director Staarman of the OWCP.

Once again, the petitioner has shown that on 6/13/96, individuals who were logically connected to the EEO process knew that the petitioner should have been returned to work, yet the petitioner was not returned to work until May 9, 1998. It must also be noted that in the 6/13/96 document, that the opponents refer to the petitioner's letter writing and on two (2) occasions, as massive letter writing campaigns.

It must be noted that the 6/13/96 document did not come to light until March of 2000 and during discovery in another law suit. The petitioner never had the opportunity to argue contents/issues of the 6/13/96 document in the EEO complaint which gave rise to this petition or in his appeal with the EEOC.

District Court Defects

1) The District Court states;

> "Generally, a statute of limitations begins to run when plaintiff's cause of action accrues: not when plaintiff understands that his injury constitutes a legal wrong, but when "he is aware, or should be aware, of the existence of and source of injury." Oshiver v. Levin, Fishbein, Sedan & Berman, 38 F.3d 1380, 1386 (3d Cir. 1994). Weber's claim accrued when he knew that he was not being put back to work despite the fact that he could work."

1a) Petitioner's agrees with the District Court that he knew he was not being returned to work despite the fact that he could work and the petitioner new he could work shortly after August 2, 1994 and not knowing about the 45-day time limit, the petitioner began his first "massive letter writing campaign" on September 6, 1994 and began the letter writing in order to be returned to work and said "campaign" began 35-days after petitioner stopped working. Therefore and without knowing about the 45-day statute of limitation, the petitioner satisfied the 45-day time limit on September 6, 1994.

2) The District Court does not address the September 6, 1994 letters, but does make the following statements;

> "Weber has also alleged that the defendants unlawfully failed to return him to work between December 3, 1994 and September 20, 1995. However, the record indicates that Weber and his doctors believed him to be totally disabled during that period."

"Weber, if totally disabled, could not have accepted any kind of job; therefore, defendants' alleged failure to offer him a limited duty position from December 3, 1994 to September 20, 1995 does not constitute an actionable injury."

2a) First, the District Court acknowledges that the petitioner made the argument that he should have been returned to work shortly after he stopped work on August 2, 1994.

Second, at no time will the opponents be able to show that the petitioner was "totally disabled" from performing some sort of limited duty work. In fact, the named physicians informed both opponents that the petitioner could not perform his "usual/regular" work but never stated that the petitioner could not perform a modified limited duty assignment. The petitioner certifies that his medical condition and regarding his shoulder injury, has not changed since the day of the injury and which was on February 11, 1994 and without any explanation, the petitioner and beginning on May 18, 2002, was instructed by opponent USPS to perform his "usual/regular" work. Therefore, the petitioner was never

"totally disabled during"

any time period that he was not working and the petitioner was never at any time

"totally disabled"

from performing his "usual/regular" work.

In sum, if the opponents would have addressed the petitioner's September 6, 1994 letters and the 6/13/96 document, then the petitioner would have been returned to work shortly after August 2, 1994 and or before May 8, 1998. Therefore, the petitioner asserts:
a) that his claim accrued on August 2, 1994;

b) that he complied with EEOC LAW (45-day statute of limitation) on September 6, 1994 by contacting individuals who were logically connected to the EEO process and who were not EEO counselors;
c) that the petitioner was never at any time
"totally disabled"
from performing his "usual/regular" work, with the exception of a short recovery period from both surgeries.

Therefore, the petitioner had an
"actionable injury"
which accrued on August 2, 1994 and the petitioners law suit should not have been dismissed.

Next, the petitioner will address the decision of the EEOC to dismiss the petitioner's EEO complaint and which follows directly infra.

EEOC decision to dismiss the petitioner's EEO complaint

The District Court makes the following statement;

> "Nor can plaintiff state a claim under the APA. Weber has an adequate remedy for his discrimination and retaliation claims under the Rehabilitation Act, which allows his to seek de novo review of the EEOC decision in federal court. See Adams v. United States Equal Employment Opportunity Commission, 932 F.Supp. 660, 664-65 (E.D.Pa. 1996)."

At the time the petitioner filed his appeal with the EEOC, he was not aware of COX v. HUD or that;

> "The Commission noted that it has long held that a complainant may satisfy the criterion of counselor

> contact by initiating contact with an agency official logically connected to the EEO process, **if the official is not an EEO counselor**.

therefore, the petitioner never had the opportunity to argue these points.

Petitioner Contacted the EEOC and Opponent USPS EEO Office

The 3rd Circuit states:

> "Weber offers no explanation for waiting to file an EEO complaint until February 1998"

In December of 1995, the petitioner contacted the EEOC. The EEOC (Philadelphia Office) informed the petitioner of the 45-day time limit. Therefore, and without knowing about the criteria regarding COX v. HUD and which is;

> "The Commission noted that it has long held that a complainant may satisfy the criterion of counselor contact by initiating contact with an agency official logically connected to the EEO process, **if the official is not an EEO counselor**."

the petitioner was well past the 45-day time limit. Therefore, the petitioner never filed an EEO complaint regarding the August 2, 1994 date.

The petitioner also discussed a related matter with the EEOC in December of 1995 and which was and because the petitioner was not returned to work after August 2, 1994, the petitioner was being denied a monetary lump sum contract award.

To be eligible for the award, the petitioner had to be in a pay status from November 26, 1994 through September 29, 1995. The petitioner filed an EEO complaint with opponent USPS on December 15, 1995. The denial of said award and the December 15, 1995 EEO complaint fell within the 45-day time limit, therefore there is no dispute about the timeliness of this EEO complaint. This EEO matter was personally addressed by Harvey White manager of Human Resources and manager of USPS/EEO complaint processing unit.

White made the following statement on May 10, 1996;

> "This is in response to your letter of April 25, 1996 addressed to Postmaster Gallagher. Our records indicate that you requested counseling concerning not receiving contract award of Nine hundred Fifty dollars ($950.00) which you alleged discrimination based on physical disability (right arm) and mental disability (depression anxiety). After a final interview on February 9, 1996, you filed a formal complaint on February 10, 1996. On February 23, 1996 after considering the facts of your case, EEOC Regulations and based on the entire record, Case 4-C-190-1044-96, was dismissed by the Postal Service for failure to state a claim/not aggrieved, in accordance with 29 C.F.R. 1614.107 (a). However, since this matter may still be addressed in the EEO process through the appeals procedure, it would be inappropriate to comment further upon its merits. Therefore, the money order submitted by you in the amount of Five hundred Thirty-seven and Sixty cents dollars ($537.60) is being returned."

What the petitioner has just shown and taking into account the reason why the petitioner did not file an EEO complaint after August 2, 1994, is that he informed the USPS in this new EEO complaint, that he should have been returned to work on December 3, 1994 and the petitioner informed the White, manager of the EEO processing unit of the USPS and who is logically connected to the EEO process. Therefore, the opponents were notified and or aware and on September 6, 1994, December 15, 1995, May 10, 1996 and June 13/1996 that petitioner should have been returned to work shortly after August 2, 1994. After not being returned to work because of this EEO complaint, the petitioner filed the February 10, 1998 EEO complaint.

Limited Duty Job Offer

In this new EEO complaint, the petitioner argued that if the petitioner would have been returned to work as per a December 3, 1994 limited duty job offer, that the petitioner would have been eligible for the contract award. Said job offer was withheld from the petitioners knowledge and did not come to light until July of 1995. Both the District Court and the 3rd Circuit acknowledge the December 3, 1994 limited duty job offer. The acknowledgments are as follows;

District Court

> **"November 1994:** A USPS supervisor proposes a limited duty position for Weber. Weber does not receive any notice of the position at this time."
>
> **"July 1995:** In the course of conducting discovery for another civil action, Weber learns of the limited duty position proposed for him in November of 1994."

3rd Circuit

> "In November of 1994, a USPS supervisor proposed a limited duty position for Weber. However, Weber received no notice of this position at that time. It was not until July 1995, while conducting discovery for another civil action, that Weber learned of this proposal"

Therefore, the petitioner has show that he should have been returned to work shortly after August 2, 1994.

The petitioner will now address the involvement of opponent DOL and which follows directly infra.

DOL/OWCP has Exclusive Authority over the FECA

It cannot be disputed that the DOL/OWCP has "exclusive authority over the FECA. The petitioner asserts that all of the documentation needed to return the petitioner to work was in the possession of opponent DOL and therefore it was up to the DOL to return the petitioner to work not opponent USPS. This issue was raised in paras.(6) and (8) of the 6/13/96 document and which states;

> "OWCP is currently working on his return to work with appropriate medical." He will be returned to work as soon as they deem it fit, and we have identified a job a Roxborough Station."

> "Carol Bronowicz has discussed this issue with District Director Staarman at OWCP."

As stated previously, this document did not become known to the petitioner until March of 2000 and if there was a question concerning medical documentation and or a job at the Roxborough Station, the OWCP never contacted the petitioner regarding either matter. Put simply, the OWCP would not respond to his letters. It must also be noted that the petitioner requested to file an EEO complaint with the OWCP but was denied by the OWCP and because the petitioner was not an employee of the OWCP. This would be in conflict with **29 CFR § 1614.106 Individual complaints, and which states;**

> (a) A complaint must be filed with the agency that allegedly discriminated against the complainant.

Pursuant to this language, the petitioner believed that the DOL was the discriminating agency therefore he was entitled to file a charge against the DOL There is no mention that the agency had to be the employing agency.

Do the Merit System Principles (MSP's) and the Whistleblowers Protection Act (WPA) apply to these matters

Petitioner asserts that the MSP's and the WPA apply in this matter and for the following reasons.
Pursuant to **5 USC § 2105 (e)** and which states:

> (e) Except as otherwise provided by law, an employee of the United States Postal Service or of the Postal rate Commission is deemed not an employee for the purposes of this title.

The Federal statutes which support and satisfies the criteria of **5 USC § 2105 (e)** and regarding "except as otherwise provided by law" and which shows that the petitioner was deemed a employee pursuant to 5 USC and regarding the MSP's and the WPA, are: 5 USC § 8101 *et seq.* FECA; 39 USC § 1005 (4)(c) Applicability of laws relating to Federal employees.

5 USC § 8101 et seq. FECA
39 USC § 1005 (4)(c) Applicability of laws relating to Federal employees.

First, federal employees are entitled to receive compensation for a job related injury/illness and the petitioner was receiving monetary compensation pursuant to the FECA.

Rehabilitation Act, 29 U.S.C. § 791 *et seq.*, the "ACT"

Second, federal employees are entitled to file claims of discrimination/retaliation pursuant to the ACT and the very foundation of the petitioner's claims of discrimination /retaliation filed under the ACT were both of the petitioners FECA claims and the FECA claims were filed with opponent DOL and the DOL has "exclusive authority" over the FECA. Additionally, on page 38 of the appendix, opponent DOL freely admits that;

> "As the OWCP will now be the employing office for health insurance purposes, the Official Personnel Folder (green) copies of the Forms SF-2810 and SF-2809 should be submitted."

Therefore, the petitioner was an employee pursuant to 5 USC § 2105 (e) and due to the FECA **5 USC § 8101 et seq.** and **39 USC § 1005 (4)(c) Applicability of laws relating to Federal employees** and that the OWCP is a component office of opponent DOL.

What the petitioner is attempting to say is and that once the DOL became involved with the petitioner's employment and since the DOL is subject to the MSP's/WPA and since the DOL has "exclusive authority" over the FECA, that the MSP's and the WPA apply in this matter and because of the DOL's involvement in these matters. Even if the MSP's did not apply to the USPS, they surly applied to the DOL and it should not have taken an alleged two (2) year late EEO complaint to return the petitioner back to work.

Lastly, the equivalent to the MSP's and regarding opponent USPS can be found in § 668.118 of the USPS Employee and Labor Relations Manual. Please see page 43 of the appendix.

For the record, the petitioner also contacted the Office of Special Counsel (OSC) regarding the conduct of opponent DOL but the petitioners file was closed because the OSC informed the petitioner that it had no jurisdiction over the petitioners complaint because he was an employee of the USPS. The petitioner also filed tort claims which raised discrimination, yet the petitioner was not returned to work.

Congress has provided many different ways to report discrimination and if an individual is not aware of his/her rights and reports discrimination in a way that is not normally the procedure, then that way should suffice. All discrimination laws support each other. And case like the petitioner's should be dealt with on a case by case basis.

In sum, the DOL has "exclusive authority" over the FECA. All of the documentation needed to return the petitioner to work were in the possession of the DOL, yet, DOL did not return the petitioner to work and the petitioner was receiving Workers' Compensation payments from August 2, 1994 to May 8, 1998.

This Court must fully understand that the petitioner's medical condition never changed from the day he was injured in February 11, 1994 and up to and including the day he was returned to work on May 9, 1998 and petitioner was returned to work only after he filed his EEO complaint on February 10, 1998, therefore, there was no reason why the petitioner should not have been returned to work shortly after August 2, 1994 surgery.

At no time will the opponents be able to show that the petitioner was "totally incapacitated" from performing any type of work, except for a short recuperating time from both surgeries.

The petitioner asserts that he should have been returned to work shortly after his first "massive letter" campaign and which began on September 6, 1994. The petitioner can not be returned to work in a timely manner if the DOL does not process the FECA injury claim in a timely manner and the DOL has "exclusive authority" over the processing of all FECA claims. The MSP's are yet another example of how the petitioner notified the opponents of discrimination, abuse of authority and gross waste of funds.

The MSP's compel government agencies to stop discrimination, abuse of authority and gross waste of funds when informed of same, yet the petitioner was

"discriminated" against by not being returned to work and at the same time he was not working, was receiving Compensation funds which he was not entitled to receive. There lies the true meaning of abuse of authority and gross waste of funds.

The opponents were both compelled to return the petitioner back to work shortly after August 2, 1994 and pursuant to the Congressional Code of Ethical Conduct, please see page 47 of the appendix.

In closing, the petitioner asserts that the letters that were written on September 6, 1994 and thereafter were the equivalent to EEO counselor contact pursuant to 29 CFR § 1614.105 Pre-complaint processing and the 45-day time limit should have been extended, please see page 39 of the appendix.

Petitioner's Statement

This petition was not just filed by a federal employee but by a concerned citizen who refuses to allow government agencies to do what ever they please. This case goes far beyond EEOC discrimination LAW and enters into the realm of reporting agency abuse of authority and agency gross waste of funds. This case is insurance fraud in reverse and the petitioner notified numerous individuals throughout the federal government and these individuals who had the authority to take, but failed to take a personnel action to stop the discrimination, abuse of authority and gross waste of funds. Did Congress intend for two agencies of the federal government to provide an employee of the federal government with Workers' Compensation (tax payer) funds for a three (3) year nine (9) month period when the employee was able to work? Absolutely not.

The petitioner has been constantly reminded that he did not meet his obligation pursuant to EEOC LAW, but what about the opponents' obligation to stop discrimination, abuse of authority and gross waste of funds. It was not for the lack of due diligence on the petitioner's part to be returned to work, but the opponents have shown their lack of due diligence or any concern to return the petitioner to work or to stop the abuse of authority and the gross waste of funds. The opponents have argued that if the EEO process is bypassed by writing letters instead of contacting an EEO counselor, then there would be no need for the EEO process. On the other hand if letters are ignored then there is no need to report corruption within the federal government. Cox v. HUD protects an employee who is not aware of her/his EEO rights. Cox v. HUD also falls in line with the words contained within the MSP and insofar as it pertains to reporting discrimination and the agency stopping the discrimination. This concludes the petitioner's arguments regarding this matter.

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Dated: June 24, 2002

UNITED STATE COURTS OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-1746

JOSEPH R. WEBER, Appellant

v.

WILLIAM J. HENDERSON, POSTMASTER GENERAL, et al.;
THE UNITED STATES POSTAL SERVICE, AGENCY

(D.C. Civ. No. 99-cv-02574)

SUR PETITION FOR PANEL REHEARING

Present: SCIRICA, BARRY and COWEN, Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having beeen submitted to the judges who participated in the decision of this Court, and no judge who concurred in the decision having asked for rehearing, and none of the members of the panel having voted for rehearing, the petition for rehearing is denied.

BY THE COURT,

_____

Circuit Judge

DATED: Mar 28 2002
SMACCTO: GRW.RM

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-1746

JOSEPH R. WEBER, Appellant

v.

WILLIAM J. HENDERSON, POSTMASTER GENERAL,
et. al.;

THE UNITED STATES POSTAL SERVICE, AGENCY

On Appeal from the United States District Court
For the Eastern District of Pennsylvania
D.C. Civil Action No. 99-cv-02574
(Honorable Anita B. Brody)

Submitted Pursuant to Third Circuit LAR 34.1(a)
January 24, 2002

Before: SCIROICA, BARRY and COWEN, Circuit Judges

JUDGEMENT

This cause came to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a). On consideration whereof, it is now hereby ORDERED and ADJUDGED by this Court that the judgement of the District Court entered January 31, 2001, be, and the same is hereby affirmed. Costs taxed against the appellant. All of the above in accordance with the opinion of this Court.

ATTEST

Clerk

DATED: February 5, 2002

UNREPORTED – NOT PRECENDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-1746

JOSEPH R. WEBER, Appellant

v.

WILLIAM J. HENDERSON, POSTMASTER GENERAL,
et. al.;

THE UNITED STATES POSTAL SERVICE, AGENCY

On Appeal from the United States District Court
For the Eastern District of Pennsylvania
D.C. Civil Action No. 99-cv-02574
(Honorable Anita B. Brody)

Submitted Pursuant to Third Circuit LAR 34.1(a)
January 24, 2002

Before: SCIRICA, BARRY and COWEN, Circuit Judges

(Filed February 5, 2002)

OPINION OF THE COURT

PER CURIAM.

Joseph Weber filed an appeal from an order of the United States District Court granting defendants' motion for summary judgment. Weber, an employee of the United States Postal Service ("USPS") brought a complaint against John E. Potter, Postmaster General of the United States, and Alexis M. Herman, Secretary of Labor, U.S. Department of Labor ("DOL"). Weber's complaint alleges that defendants discriminated against him in violation of the Rehabilitation Act of 1973, 29 U.S.C. § 791, in failing to re-employ him, and that the defendants retaliated against him for filing complaints with the Equal Employment Opportunity ("EEO") and Equal Employment Opportunity Commission ("EEOC"). In addition, Weber alleges defendants violated the "Merit Systems Principles," 5 U.S.C. §§ 2301-2302, and the Administrative Procedures Act ("APA"), 5 U.S.C. §§ 701-706.

This action stems from a work place injury on February 11, 1994. At this time, Weber filed a claim with the Office of Workers' Compensation Programs ("OWCP") of the DOL. From the time of his injury until August 1, 1994, he had surgery on his injured right shoulder. He also began receiving workers' compensation benefits under the Federal Employees Compensation Act ("FECA") for his shoulder injury. In November 1994, a USPS supervisor proposed a limited duty position for Weber. However, Weber received no notice of this position at that time. It was not until July 1995, while conducting discovery for another civil action, that Weber learned of this proposal.

Weber underwent a second surgery on his right shoulder in September 1995. On January 5, 1996 Weber's surgeon cleared him to return to limited duty work. Weber sent copies of his surgeon's report to the USPS and OWCP on January 10, 1996, asking to be returned to limited duty position. From this point until October 1996, Weber sent numerous correspondence to the OWCP, the Injury Compensation Unit of the USPS, the postal station manager, the Postmaster General, and the Secretary of Labor, seeking action on his request to be returned to a limited duty position. In his correspondence, Weber made reference to his pending tort claims against the DOL and USPS. On February 10, 1995, Weber contacted an EEO counselor, claiming discrimination on the basis of physical disability and retaliation for filing an earlier EEO complaint. Weber filed a formal EEO complaint against the USPS on March 19, 1998. The complaint alleged retaliation and discrimination on the basis of disability. The USPS offered Weber a rehabilitation job at the Roxborough Station on April 23, 1998. He accepted the position, and returned to work on May 9, 1998. The EEOC issued a final decision dismissing Weber's claims. Subsequently, on May 19, 1999, Weber filed this civil action.

In its order granting summary judgment, the District Court explained that Weber failed to exhaust administrative remedies in a timely manner, which is a prerequisite for a complaint submitted under the Rehabilitation Act. The District Court also determined that Weber failed to present factual allegations to support a claim under the "Merit System Principles" in 5 U.S.C. §§ 2301-02 or the APA.

This Court exercises plenary review over an order granting summary judgment, and applies the same standard that the lower court applied initially. Armbruster v. Unisys Corp., 32 F.3d 768, 777 (3d Cir. 1994). A federal court should grant summary judgement "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(d). In making this determination, "a court must view the facts in the light most favorable to the nonmoving party and draw all inferences in that party's favor." Armbruster, 32 F.3d at 777.

The District Court granted summary judgment to the defendants on the grounds that Weber failed to file an EEO complaint in a timely manner, and that equitable tolling did not apply to excuse Weber's failure to comply with the time limits. We have held that "a plaintiff must exhaust Title VII remedies before bringing suit under sections 504 and 505(a)(2) of the Rehabilitation Act, just as he or she must before suing under sections 501 and 505(a)(1) of the Act." Spence v. Straw, 54 F.3d 196, 201 (3d Cir. 1995) (footnote omitted). See also Freed v. ConRail, 201 F.3d 188, 191-192 (3d Cir. 2000) (reiterating holding that a federal employee suing under section 504 of Rehabilitation Act must first exhaust Title VII administrative remedies). We agree with the District Court that Weber failed to exhaust his Title VII remedies prior to bringing suit under the Rehabilitation Act.

In order to exhaust these remedies, a federal employee must first contact an EEO counselor "within 45 days of the date of the matter alleged to be discriminatory or, in the case of personnel action, with 45 days of the effective date of the action." 29 C.F.R. § 1614.105(a)(1). We agree with the District Court that Weber's claim accrued when he was initially informed that he was not being put back to work even though he was able to work. Weber's physician cleared him to return to a limited duty position on January 5, 1996. He thus claims he was denied employment from January 6, 1996 until his eventual reinstatement. Therefore, as the District Court concluded, a timely contact with an EEO counselor should have been made no later than 45 days from January 6, 1996. Weber, however, did not contact an EEO counselor until February 19, 1998.

Weber claims that he made numerous timely contacts to people "logically connected with the EEO process," thereby preserving the timeliness of his suit. Appellant's contacts included letters to "the agency heads of both defendants, Labor Relations of defendant USPS, the White House and various members of Congress and the appellant's 'union,' the NACL." Appellant's Informal Brief, at 8. Weber relies on Cox v. Cuomo, No. 01972354, 1998 WL 455064 (E.E.O.C. July 30, 1998), an agency decision which holds that the employee satisfied the requirement of contacting an EEO counselor within 45 days by contacting an agency official logically connected to the EEO process. Id. at *2. In that case, the appellant contacted the Assistant Secretary of the EEOC, the regional EEOC office, and the EEOC headquarters. Id. Mr. Weber's correspondence was never directed to anyone within the EEOC. He has failed to establish that he contacted anyone "logically connected" to the EEO process until over 2 years after the accrual date.

Therefore, Weber's Rehabilitation Act claim can be considered only if the time limit can be equitably tolled.

We have held that "the time limitations set forth in Title VII are not jurisdictional. These time limitations are analogous to a statute of limitations and are, therefore, subject to equitable modifications, such as tolling." Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d. 1380, 1387 (3d Cir. 1994) (citation omitted.) Such tolling may be appropriate "(1) where the defendant has actively misled the plaintiff respecting the plaintiff's cause of action; (2) where the plaintiff in some extraordinary way has been prevent4ed from asserting his or her rights; or (3) where the plaintiff has timely asserted his or her rights mistakenly in the wrong forum." Id. at 1387 (citation omitted). Weber offers no explanation for waiting to file an EEO complaint until February 1998. He argues only that he made timely contact with the "logically connected" to the EEO process. As previously discussed, this argument is not successful in saving Weber's claims.

We also agree with the District Court's conclusion that Weber cannot state a claim under 5 U.S.C. §§ 2301-02. These sections are part of the Civil Service Reform Act ("CSRA"), which establishes an administrative procedure to regulate employee-management relations. However, it does not set out a private right of action. Schrachta v. Curtis. 752 F.2d 1257, 1250 (7th Cir. 1985).

We conclude that granting summary judgment against Weber was appropriate. Accordingly, we will affirm the judgement of the District Court.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPH R. WEBER	:	CIVIL ACTION
Plaintiff	:	
v.	:	NO. 99-CV-2574
WILLIAM J. HENDERSON, et al.,	:	
Defendants.	:	

ENTERED
JAN 31 2001
CLERK OF COURT

EXPLANATION and ORDER

Before me is Defendant's Motion for Summary Judgment.

Plaintiff Joseph Weber, an employee of the United States Postal service ("USPS"), has brought this pro se action against William J. Henderson, Postmaster General of the United States, and Alexis M. Herman, Secretary of Labor, U.S. Department of Labor ("DOL"). Weber alleges that defendants discriminated against him in violation of the Rehabilitation Act of 1973, 1 by failing to return him to work in a limited duty position after he was disabled by a work-related injury. Weber alleges that the defendants further violated the Rehabilitation act by retaliating against him for filing Equal Employment Opportunity ("EEOC") and Equal

1 The Rehabilitation Act is the exclusive means by which a federal employee may raise a claim for disability discrimination. See Spence v. Straw, 54 F. 3d 196 (3d Cir. 1995).

Employment Opportunity Commission ("EEOC") complaints. Additionally, plaintiff asserts that defendants have violated "Merit System Principles," 5 U.S.C. §§ 2301-2302, and the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-706. For the reasons explained below, I will grant defendant's motion for summary judgment as to all of Weber's claims.

Weber is no stranger to this court. Since December of 1997, he has brought six civil actions before me. 2 In those six cases, Weber has sought judicial relief for alleged mistreatment at the hands of the DOL and the USPS under a verity of legal theories. A review of the docket reveals that, from 1994 to 1997, Weber brought five other civil actions in the Eastern district of Pennsylvania. None of those five cases progressed beyond the pleadings stage.3

FACT CHRONOLOGY

February 11, 1994: Weber injuries his right shoulder, both feet, and right achilles tendon while working as a letter carrier for the USPS. Weber files a compensation

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2 In addition to the case now before me, Weber has filed: Weber v. Herman, case no. 97-cv-7880 (settled 11/2/98; Weber petitioned for enforcement order 7/17/00; Weber v. Henderson, 98-cv-6197 (Privacy Act claims; granted summary judgment for defendants 12/12/00); Weber v. Henderson, 99-cv-2763 (Rehabilitation Act claims; disposition pending); Weber v. Henderson, 00-cv-4029 (Rehabilitation Act claims: pending); Weber v. Henderson, 01-cv-40 (restating prior claims; pending).

3 Weber v. National Association of Letter Carriers, case no. 94-cv-1204 (Judge Dalzell; stipulation of dismissal by plaintiff Weber 7/20/94); Weber v. National Association of Letter Carriers, 94-cv-7794 (Judge O'Neill; stipulation of dismissal by plaintiff Weber 9/18/95); Weber v. United States, 95-cv-577 (Judge Bechtle, stipulation of dismissal by plaintiff Weber 11/28/95); Weber v. Keystone Branch No. 157, 96-cv-3097 (Judge Reed, action dismissed with prejudice 12/22/97); Weber v. Runyon, 97-cv-4301 (Judge Dalzell, action dismissed with prejudice, 1/15/98).

claim with the Office of Workers' Compensation Programs ("OWCP") of the DOL

Feb.11-Aug. 1, 94: Weber works in a limited duty position at the Roxborough Station.

August 2, 1994: Weber has surgery on his right shoulder. He begins receiving workers' compensation benefits under the Federal Employees Compensation Act ("FECA") for his shoulder injury.

November 1994: A USPS supervisor proposes a limited duty position for Weber. Weber does not receive any notice of the position at this time.

July 1995: In the course of conducting discovery for another civil action, Weber learns of the limited duty position proposed for him in November of 1994.

September, 1995; Weber undergoes a second surgery on his right shoulder.

January 5, 1996: Weber's surgeon, Dr. Williams, clears Weber to return to limited duty work. This is the first time that Weber has been cleared to work since his first shoulder surgery in August of 1994.

January 10, 1996: Weber sends copies of Dr. Williams' report to both the USPS and the OWCP. He asks to be returned to a limited duty position.

Jan.-Oct.1996: Weber sends numerous letters to the OWCP, the Injury Compensation Unit of the USPS, the Roxborough Station manager, the Postmaster General, and the Secretary of Labor seeking action on his request for a limited duty position. His letters make reference to tort claims pending against DOL and the USPS.

February 10, 1998: Weber contacts an EEO counselor, alleging that discrimination on the basis of physical disability and retaliation for filing an earlier EEO complaint explain the failure of the USPS to return him to work.

March 19, 1998: Weber files a formal EEO complaint against the USPS for discrimination on the basis of disability and retaliation.

April 23, 1998: The USPS offers a rehabilitation job at the Roxborough Station.

May 9, 1998: Weber returns to work in the rehabilitation job at the Roxborough Station.

February 18, 1999: The EEOC affirms the decision of the USPS to dismiss Weber's discrimination and retaliation claims.

May 19, 1999: Weber files the instant civil action, no. 99-2574, following the EEO's final decision to dismiss his discrimination and retaliation claims.

DISCUSSION

1. Summary Judgment Standard

Summary judgment shall be granted if "the pleadings, depositions answers to interrogatories, and admissions on file, together with the affidavits, if any show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed..Civ.P.56(c). The role of the trial court is to determine whether there are material factual issues that merit a trial. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). If the record "could not lead to a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

At summary judgment, the court must give the nonmoving party the benefit of all reasonable inferences that can be drawn from the underlying facts. See Matsushita, 475 U.S. at 587; Sempier v. Johnson and Higgins, 45 F. 3d 724, 727 (3d Cir. 1995)(en banc). the nonmoving party, however must "do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita, 475 U.S. at 586. A nonmoving party cannot rely upon conclusory allegations to establish a genuine issue of fact. See Pastor v. Bell Telephone Co. of Pennsylvania, 24 F.3d 508, 511 (3d Cir.1994). Rule 56 states that the nonmoving party "must set forth specific facts showing that there is a genuine issue for trial." Fed.R.Civ.P. 56(e).

A court must grant summary judgment if the nonmoving party fails to make a factual showing "sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof a trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

2. Weber cannot state claims of discrimination or retaliation under the Rehabilitation Act, as he did not exhaust administrative remedies in a timely manner.

"A plaintiff must exhaust all required administrative remedies before bringing a claim for judicial relief." Robinson v. Dalton, 107 F.2d 1018, 1020 (3d Cir.1997)(citing McCart v. United States, 395 U.S. 185, 193 (1969)). The Third Circuit has held that a plaintiff must exhaust Title VII remedies before bringing suit under the Rehabilitation Act. Spence v. Straw, 54 F.3d 196, 201 (3d Cir.1996). A complaint submitted under the Rehabilitation Act or Title VII does not state a claim unless it asserts the satisfaction of the precondition to suit: prior submission of the claim to the EEOC for conciliation and resolution. See Robinson, 107 F.3d at 1022 (quoting Hornsby v. United States Postal Service, 787 F.2d 87, 90 (3d Cir. 1986)). Failure to timely exhaust administrative remedies is grounds for dismissal or summary judgment for failure to state a claim. See Robinson, 107 F.2d at 1022; Volpini v. Resolution Trust Corp., 1997 WL 476347 (E.D.Pa. Aug. 19,1997).

Under the applicable EEO regulations, an employee of a federal agency must bring his claim of discrimination to the attention of an EEO counselor "within 45 days of the date of the matter alleged to be discriminatory." 29 CFR § 1614.105(a)(1).

The 45-day time limit for presenting a claim is not jurisdictional, but rather akin to a statute of limitations and thus subject to equitable modifications such as tolling. Irwin v. Department of Veterans Affairs, 498 U.S. 89, 95-96 (1990). To determine if Weber exhausted required administrative remedies before filing this civil action, I must decide: a) whether the EEO complaint was filed in a timely manner, and b) if not, whether the equitable tolling doctrine may excuse Weber's failure to comply with the time limit.

A) Did Weber comply with the time limit imposed by the applicable regulations?

Generally, a statute of limitations begins to run when plaintiff's cause of action accuser: not when plaintiff understands that his injury constitutes a legal wrong, but when "he is aware, or should be aware, of the existence of and source of injury." Oshiver v. Levin, Fishbein, Sedan & Berman, 38 F.3d 1380, 1386 (3d Cir. 1994). **Weber's claim accrued when he knew that he was not being put back to work despite the fact that he could work.** Dr. Williams cleared Weber for work in a limited duty position on January 5, 1996; Weber claims that defendant unjustly denied him gainful employment from January 6, 1996 until reinstatement.4 Yet Weber did not contact an EEO counselor until February 10, 1998, more than two years after the allegedly discriminatory failure to return him to work.

That EEO contact would be timely if Weber could show that his cause of action accrued no more than 45 days before February 10, 1998. he cannot make such a showing. the record demonstrates that Weber knew he was not being put back to work long before he contacted the EEO counselor.

From January to October of 1996, Weber sent numerous letters to defendants seeking action on his request for a job assignment. He filed tort claims and grievances against defendants. In all of those communications and complaints, Weber asserted that the defendant' failure to reinstate him violated his rights. As "a federal cause of action arises as soon as a potential claimant is aware, or should be aware, of existence of and source of an injury," Oshiver, 38 F.3d at 1386, Weber's cause of action accrued in 1996, and his February 10, 1998 EEO contact was untimely.

4Weber has also alleged that the defendants unlawfully failed to return him to work between December 3, 1994 and September 20, 1995. However, the record indicates that Weber and his doctors believed him to be totally disabled during that period. On July 12, 1995, Weber wrote to the OWCP: "Dr. Arena is still my physician, and has not upgraded my disability to partially disabled. According to dr. Arena and Dr. Lazarus' reports, I'm still totally disabled. The only physician who informed the Office that I'm capable of limited duty that I know of is Dr. Didizian, and as far as I'm concerned I do not care what this physician's opinion is." Defendant's Statement of Undisputed facts, Exhibit 3 at 3-4.

Weber, if totally disabled, could not have accepted any kind of job; therefore, defendants' alleged failure to offer him a limited duty position from December 3, 1994 to September 20, 1995 does not constitute an actionable injury.

B) Can equitable tolling save Weber's untimely Rehabilitation Act claim?

Weber also contends that his untimely EEO contact should be excused by equitable tolling principles. The Third Circuit has explained that equitable tolling may be appropriate: "1) where the defendant has misled the plaintiff respecting the plaintiff's cause of action; 2) where the plaintiff in some extraordinary way has been prevented from asserting his rights; or 3) where the plaintiff timely asserted his or her rights mistakenly in the wrong forum." Oshiver, 38 F.3d at 1387. The burden is on the plaintiff to demonstrate facts that support tolling the limitations period. See Byers v. Follmer Trucking Co., 763 F.2d 599, 600-01 (3d Cir. 1985). The burden is substantial: federal courts have typically extended equitable relief only sparingly, allowing it in situations where the claimant has filed a defective pleading during the statutory period, or where the filing deadline passes as a result of the adversary's trickery. Irwin, 498 U.S. at 96 (collecting cases). "We have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights." Id. (citing Baldwin County Welcome Center v. Brown, 466 U.S. 147, 151 (1984)).

In denying defendants' motion to dismiss this claim, I suggested that Weber could justify tolling by showing that because of defendants' deception, he could not have discovered, by reasonable diligence, the essential factual information bearing on his claim. See Oshiver, 38 F.3d at 1390. Weber has not made such a showing. he does not claim that he discovered new information in February of 1998 that allowed him to state claims under the Rehabilitation Act. Rather, the Rehabilitation Act claims are based on facts that were known to Weber in 1996.

Weber has not provided any facts to support the limitations period. Having failed to exhaust his administrative remedies, Weber cannot state claims under the Rehabilitation Act. Therefore, I will grant summary judgment for defendants as to those claims.

3. Plaintiff cannot state a claim under the "Merit System Principles" in 5 U.S.C. §§ 2301-02

Section 2301 is part of the Civil Service Reform Act ("CSRA"), a comprehensive effort to regulate employee-management relations in the federal government. The CSRA sets out an administrative claims procedure, but does not provide plaintiff with a private right of action. See Alasevich v. U.S. Air Force Reserve, 1997 WL 152816 *6 (E.D.Pa. Mar.26, 1997).5 Weber has not shown that he is entitled to remedies under the CSRA; nor has he shown that he exhausted the administrative remedies provided in the CSRA. Accordingly, I will grant defendants' motion for summary judgment on these claims.

4. Defendants are entitled to summary judgment with respect to plaintiff's claims under the APA

Nor can plaintiff state a claim under the APA. Weber has an adequate remedy for his discrimination and retaliation claims under the Rehabilitation Act, which allows his to seek de

5The CSRA provides a claims procedure for government employees; through the Merit Systems Protection Board and the Office of Special Counsel, the CSRA seeks to ensure the protection of whistleblowers against retaliation. A government employee could only seek judicial relief after a final order of the Board. Alasevich, 1997 WL 152816*6.

novo review of the EEOC decision in federal court. See Adams v. United States Equal Employment Opportunity Commission, 932 F.Supp. 660, 664-65 (E.D.Pa. 1996).

Nor can Weber secure judicial review of his workers' compensation claims under the APA. FECA contains a broad preclusion-of-review provision which bars judicial review of the matters arising within its scope. See 5 USC § 8128 (b). The Supreme Court has found that when Congress uses preclusive language of the type used in FECA, it "intends to bar judicial review altogether." Lindahl v. Office of Personnel Management, 470 U.S. 81, 90. This court does not have jurisdiction to review Weber's workers' compensation claim under the APA. Therefore, I will grant defendants' motion for summary judgment on this claim as well.

5. Claims not alleged in Weber's complaint must be dismissed

Weber also seeks relief under the Privacy Act, 5 U.S.C. § 552a, and under various criminal statutes, 18 U.S.C. §§ 241, 287 and 1001. Weber did not comply with Rule 15 of the Federal Rules of Civil Procedure to properly amend his complaint to include these claims. Therefore, I will dismiss these claims without discussing of their merits.

For those reasons, I grant Defendants' Motion for Summary Judgment. An appropriate order follows.

AND NOW, this 26 day of January, 2001, having considered Defendants' Motion for Summary Judgment, Plaintiff's Motion in Opposition to Defendants' Motion for Summary Judgment," and Defendants' Reply Brief, it is **ORDERED** that:

1) Defendants' Motion for Summary Judgment (docket entry no. 21) is **GRANTED;**

2) Plaintiff's "Motion in opposition to Defendants' Motion for Summary Judgment" (docket entry no. 23) is **DENIED.**

It is **FURTHER ORDERED** that the Clerk shall close this case statistically.

"s/Anita B. Brody
ANITA B. BRODY,J.

Copies FAXED on 1-30-2001 to:
Richard Mentzinger, Jr., AUSA
James G. Sheehan, AUSA

U.S. Equal Employment Opportunity Commission
Office of Federal Operations
P.O. Box 19848
Washington, D.C. 20036

Joseph R. Weber,	) Appeal No. 01986640
Appellant,	)Agency No. 4-C-190-0113-98
v.	)
William J. Henderson	)
Postmaster General,	)
United States Postal Service,)	
Agency.	)
	)

DECISION

On September 3, 1998, appellant filed a timely appeal of an August 8, 1998 final agency decision dismissing his complaint for failure to contact an EEO Counselor in a timely manner.1

The final agency decision framed the allegations of the April 11, 1998 complaint as whether appellant was discriminated against on the bases of physical disability and retaliation (prior EEO activity) when on December 3, 1994, he was not allowed to return to work. In dismissing the complaint, the agency noted that because appellant did not contact an EEO counselor until February 10, 1998, for an alleged discriminatory event that occurred over three years prior, the contact was beyond the 45-day time period and, therefore, untimely. The agency also noted that appellant failed to provide jurisdiction sufficient to extend the time limit.

EEOC Regulation 29 C.F.R. § 1614.105 (a)(1) requires that an aggrieved person initiate contact with an EEO counselor within 45-days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, 45 days of

the effective date of the action. EEOC Regulation 29 C.F.R. § 1614.105 (a)(2) permits the time period to be extended under certain circumstances and 29 C.F.R. § 1614.604 (c) provides that the time limits in Part 1614 are subject to waiver, estoppel and equitable tolling. The

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1The Commission notes that the appellant references several civil actions filed in the United States District Court. It appears that these actions were filed regarding his workers' compensation claim and Freedom of Information Act and Privacy Act requests. There is no evidence in the present record that the subject matter of this appeal was raised in the civil actions filed by the appellant and the agency has not indicated that the civil actions filed were on the same matter. See 29 C.F.R. §§ 1614.107 (c), 1614.410.

Commission has adopted a "reasonable suspicion" standard (as opposed to a "supportive facts" standard) to determine when the 45-day limitation period is triggered. See Ball v. U.S. Postal Service, EEOC Request No. 05880247 (July 6, 1988). Thus, the limitation period is not triggered until a complainant should reasonably suspect discrimination, but before all of the facts that would support a charge of discrimination have become apparent. When a complainant has some reason to support the belief that prohibited discrimination has occurred, contact with a Counselor must occur. Waiting until one has proof of discrimination before initiating a complaint can result in untimely contact. See Bracken v. U.S. Postal Service, EEOC Request No. 05900065 (March 29, 1990).

Initially, the Commission notes that appellant apparently sustained a work injury to his shoulder on February 11, 1994,

when he fell.2 Appellant indicated that he continued to work in a limited duty position from February 12, 1994 to August 1, 1994. The claim was accepted by the Department of Labor's (DOL) Office of Workers' Compensation Programs (OWCP). Appellant underwent surgery in August 1994. It appears that appellant first returned to work in May 1998.

Regarding the timeliness of his EEO contact, appellant does not dispute that he was aware of the time period for timely contact. Appellant also does not dispute, and the Counselor's Report reveals, that appellant did not contact an EEO Counselor until February 10, 1998 regarding the alleged discriminatory incident. However, appellant argues that the time limit be extended because he did not know that the discrimination occurred. We are not persuaded by appellant's arguments that the time limit should be extended or waived. On appeal and in his Information for Precomplaint Counseling (Precomplaint), appellant alleged that he was never informed by the agency that he was to return to work on December 3, 1994, and that the agency would not respond to his numerous letters. In his Precomplaint, appellant also alleges that he only became aware of the agency's letter informing him that he was to return to work on December 3, 1994, after filing Freedom of Information Act requests with the DOL and a civil action in U.S. District Court.3 In an August 28, 1995 letter, from appellant to

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2 In 1991, appellant apparently filed a workers' compensation claim for a non-physical injury. The claim was initially denied by the OWCP. In August 1995, however, the OWCP approved the claim for adjustment disorder/anxiety reaction.

3 It is not clear from the record when the FOIA requests were satisfied.

the DOL, he indicates that he knew of the limited duty job offer. In his brief, appellant refers to a September 12, 1995 letter from the OWCP. In that letter which is a part of the record, the OWCP Claims Examiner informed appellant, among other things, that she was enclosing the agency letter concerning the December 3, 1994 job offer 4 and informed appellant that she was sending the agency's letter to his physician. Appellant replied to the Claims Examiner's letter in a September 19, 1995 letter. In addition, in his appeal brief, appellant states that on February 18, 1997, he was visited by the agency's home visitation team and that he informed the team that he should have been returned to employment on December 3, 1994, and on January 6, 1996. We find, therefore, that appellant knew at least by August 1995, about the agency's letter. Appellant failed to act with due diligence in the pursuit of his claim and did not take any action until February 1998. See O' Dell v. Department of Health and Human Services, EEOC Request No. 05901130 (December 27, 1990). Accordingly, the agency's decision was proper.

Finally, the Commission notes that appellant also appears to be filing what purports to be an "appeal" against the DOL regarding an August 12, 1998 decision of the OWCP regarding his compensation claim.5 A review of the copious record in the case at hand reflects that appellant's has raised allegations about the OWCP's administration of his workers' compensation benefits, an issue over which we have no jurisdiction. Accordingly, to the extent that appellant is challenging the OWCP's handling of his OWCP claims or its decisions regarding benefits, such allegations amount to an impermissible collateral attack on matters within the jurisdiction

4 The agency's letter to appellant informed him, in relevant part, that he was to report to work in a limited duty capacity on December 3, 1994, and that if he failed to do so, his continuation of pay would be terminated and notification would be provided to the OWCP for appropriate action

5On the face of one of his briefs on appeal, appellant identified the parties in the caption as DOL and himself. Therein, he alleged that the DOL failed to reply to his July 1998 requests for EEO counseling and to file a formal EEO complaint. There is no evidence that appellant was an employee or an applicant for employment with the DOL. Appellant indicated in his brief, however, that he would treat the OWCP's August 12, 1998 decision terminating his workers' compensation benefits as a dismissal of his ":complaint," although the OWCP decision clearly informed appellant how he should proceed, if he were dissatisfied with its decision.

of the OWCP forum and, as such, fail to state a claim. the Commission has recognized very narrow exceptions to the general prohibition on collateral attacks. See Ellis v. U.S. Postal Service, EEOC Request No. 05920011 (March 12, 1992) (discriminatory application of the grievance process may state a claim).Thus, for example, if an agency refused to accept grievances from all persons within a protected class, such as race or disability, that allegation would state a claim. In the case at hand, there is no evidence that the allegations concerning the OWCP claims process relate to an employment policy or practice, either by the agency or by the DOL. See Reloj v. Veterans Administration, EEOC Request No. 05960545 (June 15, 1998); Agustin v. Department of

Labor, EEOC Request No. 05960127 (December 19, 1996); Wheeler v. Department of Labor, EEOC Appeal No. 01963976 (July 11, 1997); Stone v. Department of Labor, EEOC Appeal No. 01950550 (February 9, 1996).

The proper forum for appellant to raise challenges to actions which occurred during the OWCP processing and investigation of his injury claims was within the OWCP process. It is inappropriate to use the EEO process to collaterally attack decisions or actions which occurred during the processing of an OWCP claim. As noted earlier, challenging the decisions of the OWCP and the manner in which determinations were made by the OWCP constitute a collateral attack on OWCP's decisions and appellant in not aggrieved for purposes of the EEOC Regulations. See Diaz v. Department of the Air Force, EEOC Request No. 059310 49 (April 21, 1994).

Based on the foregoing and consistent with our decision, the agency's final decision is **AFFIRMED.**

FOR THE COMMISSION:

"s/Ronnie Blumenthal".
RONNIE BLUMENTHAL, Director
Office of Federal Operations

UNITED STATES POSTAL SERVICE
EQUAL EMPLOYMENT OPPORTUNITY CASE
IN THE MATTER OF

Joseph R. Weber,	)	Date: 07Aug1998
Complainant,	)	Agency Case No.
v.	)	4-C-190-0113-98
William J. Henderson,	)	
Postmaster General,	)	
U.S. Postal Service,	)	
(Allegheny/Mid-Atlantic Areas),)		
Agency.	)	

DISMISSAL OF FORMAL EEO COMPLAINT

This is the Postal Service's **final decision** on the above-cited discrimination complaint. the complainant alleged discrimination on the bases of physical disability (Job related injury) and retaliation (Prior EEO Activity) when on December 3, 1994, he was not allowed to return to work and his visit to the EEO office on February 9, 1998 gave rise to him requesting EEO counseling.

CASE CHRONOLOGY

Complainant was employed as a Carrier, PS-5 for the agency's Roxborough Station located in Philadelphia PA, at the time of the alleged discriminatory action. The record reflects that on **February 10, 1998**, complainant requested pre-complaint processing. On April 3, 1998, complainant was notified of the right to file an individual complaint and subsequently filed complaint on April 11, 1998.

ANALYSIS AND CONCLUSION

Under part 29 C.F.R. § 1614.105, an aggrieved person must initiate contact with a Counselor within 45 days of the date of the matter alleged to be discriminatory. evidence of the record indicates that complainant did not contact a Counselor until **February 10, 1998,** approximately **3 years, 2 months and 7 days** after the alleged discriminatory action took place on **December 3, 1994.**

EEOC Regulations at 29 C.F.R. § 1614.105 (a)(2) state that the agency shall extend the 45-day time limit when the individual shows that he or she was not otherwise aware of them, that he or she did not know and reasonably should have known that the discriminatory matter or personnel action occurred, that despite due diligence he or she was prevented by circumstances beyond his or her control from contacting the counselor within the time limits, or for other reasons considered sufficient by the agency.

Complainant has provided no evidence of not being aware of the time limit for contacting an EEO Counselor. Further, complainant has offered no evidence that would serve to persuade the agency to extend the time limits for contacting an EEO Counselor in this case.

the regulations provide that the agency shall dismiss a complaint or portion of a complaint that fails to comply with the applicable time limits contained in 1614.105. Therefore, complainant's complaint alleging discrimination as cited above is now dismissed as untimely brought to the attention of an EEO Counselor in accordance with 29 C.F.R. § 1614.107 (b).

"s/Leo".
For Robin A. reed
A/EEO Compliance & Appeals Coordinator

Digest of EEO Law, Vol XI, No.7
The Equal Employment Opportunity Commission

COMMISSION HIGHLIGNTS
I

CONTACT WITH OFFICIAL LOGICALLY CONNECTED TO EEO PROCESS SATISFIES REQUIREMENTS TO CONTACT EEO COUNSELOR

Cox v. Department of Housing and Urban Development, **EEOC Request No. 05980083 (July 30, 1998)**

Appellant contacted an EEO counselor on February 8, 1996, alleging that she was harassed and forced to resign on July 7, 1995 because of her disability (hearing impairment). The agency dismissed her complaint for failure to contact an EEO counselor within 45 days of the date of the discriminatory event. On appeal, appellant provided evidence that she wrote letters concerning the matter to the agency's Assistant Secretary in one of its regional offices, as well as to the agency's headquarters in Washington, D.C. Appellant also stated that she had contacted the agency's Regional Counsel concerning the matter in July 1995. The Commission noted that it has long held that a complainant may satisfy the criterion of counselor contact by initiating contact with an agency official logically connected to the EEO process, if the official is not an EEO counselor. In this case, the Commission found that the appellant's contact with the named agency officials was sufficient to toll the time limit for contacting an EEO counselor. The Commission remanded the complaint for processing.
http://www.eeoc.gov/digest/xi-7-2.html 11/27/99

ANALYSIS AND FINDINGS

EEOC Regulation 29 C.F.R. 1614.105(a)(1) requires that complaints of discrimination should be brought to the attention of the EEO Counselor within forty-five (45) days of the date of the matter alleged to be discriminatory, or in the case of a personnel action, within forty-five (45) days of the Counselor until February 8, 1996, which was more than 45 days since her resignation in July 1995. In addition to claiming that she was unaware of the time limits, appellant contends that she attempted to file her complaint with various offices within the agency, but never received a response. Although the previous decision remanded the case for a determination of whether or not appellant had constructive notice of the 45 day time limit, after a review of appellant's request for reconsideration and the entire record, the Commission determines that the question now presented is whether or not appellant actually attempted to contact agency officials about the alleged discrimination prior to and shortly after her resignation.

The Commission has long held that a complainant may satisfy the criterion of counselor contact by initiating contact with any agency official logically connected to the EEO process, even if the official is not an EEO Counselor.

George S. Floyd v. NGB, EEOC Request No. 05890086 (June 22, 1989). Appellant maintains that she made the requisite contact when she wrote letters to the Assistant Secretary in Fort Worth, the Regional office in Dallas, as well as agency headquarters in Washington, D.C. Although she admits that she does not have copies of the letters and did not send them certified mail, she provides the names of the individuals to whom she sent the letters, as well as the date she sent the letters. In addition, appellant avers that she telephoned agency officials inquiring about the status of her complaint, and provides the names of these persons as well. Furthermore, in a letter dated September 19, 1995 contained in the file, appellant makes reference to contacting the Regional Counsel for the agency in Dallas in July 1995, and the EEO Counselor's report verifies that appellant informed the EEO Counselor of this contact as well. The Commission notes that the EEO Counselor's report reveals the address and telephone number of the official appellant claims to have contacted in Dallas.

Given the fact that appellant provides many specific names and dates to support her position, and given that her version of the facts remained consistent throughout the processing of the complaint, as verified in the July 1995 letter and the EEO Counselor's report, the Commission finds that appellant's claim that she wrote to responsible agency officials as early as July 1995 is credible. Moreover, although it appears from the record that the agency made efforts to determine whether or not a letter was ever filed with agency headquarters in Washington, D.C., it does not appear from the record that any effort was made to locate such a letter in the agency's regional office. Under these unique circumstances, the Commission finds that equitable tolling of the time limit for contracting an EEO Counselor is appropriate in this case.

The agency shall process the complaint in accordance with the order below.

CONCLUSION

After a review of appellant's request for reconsideration, the previous decision, and the entire record, the Commission finds that appellant's request meets the criteria of 29 C.F.R. 1614.407(c). It is therefore the decision of the Commission to grant appellant's request. The decision of the Commission in EEOC Appeal No. 01972354 is hereby modified, and the complaint remanded in accordance with the order below. There is not further right of administrative appeal on a decision of the Commission on a Request for Reconsideration.

EEOC 19 Dec 00 01992817 Cristantiello, Michael VS Army

EEOC 11 Oct 00 01A01182 Smith, Frank T. VS VA

EEOC 19 Sep 00 01A04668 Hobbs, Richard VS Commerce

EEOC 8 August 00 01994739 Maldonado, Myriam et al. VS VA

Footnotes:

Footnote 1: ##The Commission notes that in its second final decision, the agency presents evidence that it had displayed all pertinent information about the EEO process, such that appellant had constructive notice about the time limit for contracting an EEO Counselor. We find that this decision was issued by the agency in error, inasmuch as the agency was sent notification that the corrective action on the previous decision was suspended until the Commission had the opportunity to issues a decision on appellant's request for reconsideration. In any event, considering that the focus in this case is on whether or not appellant actually made timely contact with an agency official about the discrimination, we find that the agency's second final decision does not affect the outcome of this decision. It is therefore vacated.

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RECEIVED
MANAGER
JUN 14 1996
HUMAN RESOURCES
PHILA. DIST.

Author: SARAH J SKIRIM at PHPA005L
Date: 6/13/96 3:57 PM
Priority: Normal
TO: HARVEY WHITE
CC: CHARLES C POLK
CC: PATRICIA A GREENAWALT
TO: JAMES J GALLAGHER
CC: JOHN B HARRISON
CC: PA-19128 PHILADELPHIA
CC: CAROLYN L NAPIER
CC: CAROL J BRONOWICZ at PTPA001L
Subject: Joseph Weber, SSN - 164-40-0978, DOI-11-23-91 and 2-12-94

Mr. Weber, Roxborough Letter Carrier, has been out of work on OWCP's Authomatic Rolls since Aug 2, 1994. He had shoulder surgery which was authorized by OWCP.

In the winter of 1994/1995 Mr. Weber began a massive letter writing campaign to Operations, HR, OWCP, Headquarter, numerous congressman, the "Chief Executive officer of the United States" etc. requesting forms he had submitted, receipts, inspection service reports, etc. A response was sent by my shop concerning the HR info in march. He was also directed at that time to submit future requests for information to his Station Manager who would cooridinate a response.

In Seotember of 1995, Sherrie Newman, Attorney of Law, Ethics Information Law, Headquarters coordinated a second response to him with the assistance of Janice Smith.
In February of 1996, his letter writing campaign started again. The Allegheny Area ICU Office responded to him on April 1, 1996. Thay explained that OWCP was still investigating his return to work, and the USPS would follow their direction.

Mr. Weber has 2 open claims. One in 1991 for a psychiatric condition and one in 1994 for a torn rotator cuff (shoulder injury). His most recent medical from his treating physician states he is treating with a psycoligist and is Fit for Limited Duty for his shoulder injury. the rehab nurse previously assigned to the case requested that she be removed from the case because she felt threatened bt his actions. He continues to receive workers' compensation.

OWCP is currently working on his return to work with appropriate medical. He will be returned to work as soon as they deem it fit, and we have identified a job a Roxborough Station.

He has now written an article in the Federal Times which Chief Inspector Chambers has questioned. We have relayed the information on the case to him trough Jim Danvers and Inspector Trovarello.

Carol Bronowicz has discussed this issue with District Director Staarman at OWCP.

I have put a copy of the article in the mail to each of you.

December 23, 1994
File Number: 03-0193658
Employee: JOSEPH R. WEBER
As the OWCP will now be the employing office for health insurance purposes, the Official Personnel Folder (green) copies of the Forms SF-2810 and SF-2809 should be submitted.
"s/Debra Ross".
DEBRA ROSS
Claims Examiner

29 CFR § 1614.105 Pre-complaint processing.
(a) Aggrieved persons who believe they have been discriminated against on the basis of race, color, religion, sex, national origin, age or handicap must consult a Counselor prior to filing a complaint in order to try to informally resolve the matter.
(1) An aggrieved person must initiate contact with a Counselor within 45 days of the date of the matter alleged to be discriminatory or, in the case of personnel action, within 45 days of the effective date of the action.
(2) The agency or the Commission shall extend the 45-day time limit in paragraph (a)(1) of this section when the individual shows that he or she was not notified of the time limits and was not otherwise aware of them, that he or she did not know and reasonably should have been known that the discriminatory matter or personnel action occurred, that despite due diligence he or she was prevented by circumstances beyond his or her control from contacting the counselor within the time limits, or for other reasons considered sufficient by the agency or the Commission.

29 CFR § 1614.106 Individual complaints.
(a) A complaint must be filed with the agency that allegedly discriminated against the complainant.

39 USC § 1005 (4)(c) Applicability of laws relating to Federal employees
(c) Officers and employees of the Postal Service shall be covered by subchapter I of chapter 81 of title 5, relating to compensation for work injuries.

5 USC § 2105 (e)

(e) Except as otherwise provided by law, an employee of the United States Postal Service or of the Postal rate Commission is deemed not an employee for the purposes of this title.

5 USC § 8128 (b)(2)

(b) The action of the Secretary or his designee in allowing or denying a payment under this subchapter is-
(2) not subject to review by another official of the United States or by a court by mandamus or otherwise.

§ 668.126 Prohibited Personnel Practices

Allegations of violations of the provisions of 668.11, Restrictions which cannot be brought through any other procedure may be sent to the
EXEC ASST TO POSTMASTER GENERAL
US POSTAL SERVICE
475 L'ENFANT PLZ SW
Complaints filed with the Exective Assistant must be in writting with as much specific information on the alleged violation as possible. Allegations of violations of law will be referred to the Inspection Service. The complainant will be informed in writing of the disposition of the complaint.

§ 661.51 Discrimination

No employee while acting in an official capacity will directly or indirectly authorize, permit, or participate in any action, event or course of conduct which subjects any person to discrimination, or results in any person being discriminated against on the basis of race, color, religion, sex, national origin, age (40+), or physical or mental handicap, or any other nonmerit factor.

661.812 Associate Ethical Conduct Officers

The following individuals are designated as Associate Ethical Conduct Officers:

b. The Senior Assistant Postmasters General, Regional Postmasters, heads of those departments which report directly to the Postmaster General or Deputy Postmaster General, Regional Chief Inspectors, and the Directors of Postal Data Centers are Associate Ethical Conduct Officers for their respective organizational elements.

668 Restrictions

668.1 Prohibited Personnel Practices

668.11 Restrictions

668.111 General

The following restrictions apply to any USPS employee who has authority to take, direct others to take, recommend, or approve any personnel action with respect to any employee, eligible, or applicant.

668.112 Prohibited Discrimination

a. *Race, Color, Religion, Sex, Age (40+) National Origin, or Physical or Mental Handicap.* See subchapter 670.

c. *Conduct Which Does Not Adversely Affect Performance.* No person may be discriminated for or against on the basis of conduct which does not adversely affect that person's performance or the performance of others; except that in determining suitability or fitness of that person, any conviction for any crime under the laws of any state, of the District of Columbia, or of the United States may be taken into account.

668.114 Improper Employment and Placement Practices

Deceitfully or willfully obstructing or improving the prospects of any person competing for a position by granting a preference or advantage not authorized by law, rule, or regulation (including defining the scope or manner of competition or the requirements for a position), or by influencing anyone to withdraw from competition for a position is prohibited.

668.115 Soliciting or considering any recommendation or statement, oral or written, with respect to any individual who requests, or is under consideration for any personnel action, is prohibited unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of:

a. An evaluation of the work performance, ability, Aptitude, or general qualifications of such individual; or

668.117 Reprisal for Exercising Appeal Rights

Taking or failing to take any personnel action as a reprisal for the exercise of any appeal right granted by a law, rule, or regulation is prohibited.

668.118 Reprisal for Release of Information

No one may take or fail to take a personnel action as a reprisal for a disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences:

a. A violation of any law, rule, or regulation; or:

b. Mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law or if such information is not specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs.

672 Deligation of Authority

672.1 Key Personnel

672.11 The EEO Officer for the Postal Serivce AA/EEO Program is the Postmaster General

672.15 The Regional Postmasters General (RPMGs) are Responsible for overseeing the AA/EEO program in their regions including the development of the Regional Multiyear AA/EEO Plan. The RPMG, or designee, renders the final agency decision for Postal Service on complaints of discrimination emanating from employees or applicants for employment in the regions. The RPMGs direct necessary corrective action in most individual complaints of discrimination arising within their regions.

672.16 The Chief Postal Inspector and each Regional Director, Human Resources, are responsible for developing AA/EEO programs and Multiyear Plans in their respective areas of concern.

672.2 Responsibilities

672.21 National

672.212 Headquarters, regions, and field installations will develop their own AA/EEO Plans and programs consistent with postal policies and instructions. Managers and installation heads must ensure that USPS goals reach all functional areas at all levels of the work force to eliminate barriers that impede AA/EEO progress.

672.22 Headquarters

672.221 At the Headquarters level, heads of groups, departments, and offices reporting directly to the Postmaster General are the designed EEO officers for their particular units. They are functionally responsible to the Director of Equal Employment Opportunity (the SAPMG, Human Resources Group) for carrying out their functions as EEO Officers.

672.23 Field Divisions

672.231 The Field Division General Manager/Postmaster:

a. Serves as Equal Employment Opportunity Officer at the division level and is also responsible for all the AA/EEO programs in the division and they day-to-day operations of the formal complaint process.

b. Oversees the development of the required Multiyear AA/EEO Plan.

c. Has been delegated the authority to issue final agency decisions for the Postal Service in certain cases within the division. (See also 675.17.)

672.232 The Field Director, Human Resources, is responsible for the daily directional management of the AA/EEO and Special Emphasis Programs including complaint processing and the required Multiyear AA/EEO plan. (See also 675.15.)

672.233 The Manager, EEO Complain Processing, reports to the Field Director, Human Resources, and is responsible for the day-to-day management of complaint processing including pre-complaint counseling. The Manager also supervises the EEO Counselor/Investigators, maintains liaison with appropriate officials of the Equal Employment Opportunity Commission (EEOC), coordinates arrangements for hearings, and prepares final agency decisions in certain cases. (See also 675.15, 675.16, and 675.19.)

672.234 The EEO Counselor/Investigator serves at the local level as a bridge between employees and management, tries to counsel or resolve problems that are raised by employees, and investigates formal complaints. The following are of particular importance to this position.

672.237 USPS supervisors and managers set the pace and tone for their facility or organization. This is vital to the success of the AA/EEO programs.

666 Code of Ethical Conduct

661.1 Purpose and Applicability

661.11 This Code of Ethical Conduct is designed to instruct and guide employees entering the Postal Service, and to remind all employees of the conduct expected and required of them in performing their offical duties and in their general conduct.

661.12 Congressional Code of Ethics for Government Service

661.21 The standards of conduct for all employees of the United States have been stated by Congress in the Code of Ethics for Government Service. All postal employees are expected to follow the standards quoted in Exhibit 661.21.

1. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or government department.
9. Expose corruption wherever discovered.
10. Uphold these principles, ever conscious that public office is a public trust.

661.2 Standards of Conduct

f. Affecting adversely the confidence of the public in the integrity of the Postal Service.

661.5 Other Prohibited Conduct

661.51 Discrimination

No employee while acting in an official capacity will directly or indirectly authorize, permit, or participate in any action, event or course of conduct which subjects any person to discrimination, or results in any person being discriminated against, on the basis of race, color, religion, sex, national origin, age (40+), or physical or mental handicap, or any other nonmerit factor.

661.52Unacceptable Conduct

No employee will engage in criminal, dishonest, notoriously disgraceful or immoral conduct, or other conduct prejudicial to the Postal Service. Conviction of a violation of any criminal statute may be grounds for disciplinary action by the Postal Service, in addition to any other penalty by or pursuant to statute.

661.8 Ethical Conduct Advisory Service and Remedial Action

661.81 Advisory Service

661.811Ethical Conduct Officer

The Ethical Conduct Officer will provide advice and guidance for the Postmaster General and all Associate Ethical Conduct Officers concerning questions arising under this Code, and may delegate to an Assistant Ethical Conduct Officer authority to perform any duty or function vested in the Ethical Conduct Officer by the Code.

20 CFR § 10.23 (a),(b),(c)

(a) Any employee, beneficiary, official supervisor, representative, or other person who knowingly makes, or knowingly certifies to, any false statement, misrepresentation, concealment of fact, or any other act of fraud with respect to a claim under the Act, or who knowingly accepts compensation to which that person is not entitled, is subject to criminal prosecution and may, under appropriate U.S. Criminal Code provisions (e.g., 18 U.S.C. 287 and 1001), be punished by a fine of not more than $10,000 or imprisonment for not more than five years, or both.

(b) Any employee, beneficiary, official supervisor, representative, or other person who, with respect to a claim under the Act, enters into any agreement, combination, or conspiracy to defraud the United States by obtaining or aiding to obtain the payment or allowance of any false, fictitious or fraudulent claim is subject to criminal prosecution and may, under appropriate U.S. Criminal Code provisions (e.g., 18 U.S.C. 28), be punished by a fine of not more than $10,000 or imprisonment for not more than ten years, or both.

(c) Any person charged with the responsibility of making reports in connection with an injury who willfully fails, neglects, or refuses to do so; induces, compels, or directs an injured employee to forego filing a claim; or willfully retains any notice, report, or paper required in connection with an injury, is subject to a fine of not more than $500 or imprisonment for not more than one year, or both.

[52 FR 10505, Apr. 1, 1987]